

5 September 2019

Ms Susie Black  
Director – Coordination and Strategy  
Merger & Adjudication Review Division  
Level 17 Casselden Place  
2 Lonsdale Street, Melbourne 3000

Sent by email to: [Theo.Kelly@accc.gov.au](mailto:Theo.Kelly@accc.gov.au)

Dear Ms Black

**New Energy Tech Consumer Code - AA1000439  
Response to Submission dated 23 August 2019 by Terceiro Legal Consulting Pty  
Ltd**

We refer to the letter dated 23 August 2019 from Terceiro Legal Consulting Pty Ltd to the ACCC Adjudication Branch (**TLC letter**), which has recently been brought to the attention of the Clean Energy Council (**CEC**).

The TLC letter is framed as a submission on the Draft Determination in respect of the New Energy Tech Consumer Code (**NETCC**) (Authorisation No. AA1000439).

We write to provide a brief response on behalf of the CEC to the matters raised in the TLC letter.

**General comments**

Noting the current timeframes for the ACCC's further consideration of the NETCC, we provide this response on short notice.

A number of the points raised in the TLC letter go to issues which have been addressed in detail in previous submissions made by the CEC in respect of the NETC Code (and also in submissions made by various other stakeholders). Accordingly, we do not repeat the detail of those past submissions on those issues in this letter.

The TLC letter otherwise makes a number of assertions and allegations as to issues around the administration of the Solar Retailer Code of Conduct (**Solar Code**) which are put on a generalised, unsubstantiated and argumentative basis. Various of these allegations lack any detail. They are made, in effect, on an anonymous basis (on the part of two solar industry participants whose identities are not disclosed).

In the circumstances, it is neither possible nor appropriate for the CEC to seek to address such anonymous and generalised allegations in any detail, and the CEC submits that the ACCC (or any other party) should give limited weight to such submissions.

We comment briefly below on the matters raised under each heading of the TLC letter.

**“Application process”**

The submissions and allegations in this section of the TLC letter are, in general terms, anonymous, unsubstantiated, argumentative rather than factual, and lacking in detail or specific evidence sufficient to allow proper consideration of, or detailed response to same.

By way of general response, the CEC's administration of the Solar Code has been appropriate, even-handed and professional. Without seeking to traverse each of the various apparent allegations and insinuations made in the TLC letter, we do need to note in particular that the TLC letter makes what could be considered to be very serious (and potentially vexatious or scandalous) allegations of ill-intent or improper purposes on the part of the CEC (including as to "anti-competitive" purposes or behaviour), each of which the CEC strenuously rejects.

That aside, as to the other allegations as to "situations" or "instances", even where the CEC might be able to make a reasonable assumption as to a particular matter or circumstance to which the TLC letter may be referring (and which is only the case with some, and not all, of the various assertions and allegations), it cannot comment on the detail of any such particular matter, notwithstanding that in doing so it would rebut or challenge various incorrect or incomplete statements of fact. To do so would traverse matters which remain, absent the specific consent of the party in question, confidential as between the CEC and that party (whether applicant or signatory to the Solar Code).

It is enough to note that the TLC letter does not provide an accurate or complete picture of any matter which has been, or is being, addressed by the CEC where an applicant or signatory has sought to raise an issue or dispute in respect of the application or administration of the Solar Code.

The CEC has received and determined some 964 of applications by entities or persons to become signatories to the Solar Code. There are some 467 current signatories to the Solar Code. There are some 244 current applications with the CEC by entities to become signatories to the Solar Code. As at the date of this letter, there are several matters on foot where an applicant or signatory has raised a dispute or contention with the CEC (in its capacity as Code Administrator for the Solar Code) as to a decision on an application or matter in respect of the Solar Code. In each of those cases, the CEC remains in communication with the party in question, and has indicated, an intention to work toward a resolution of the matter consistent with the Solar Code.

The TLC letter appears to advocate for the inclusion in the NETC Code of some form of right of appeal (and/or review) as to decisions on applications to become a signatory. On this issue, the CEC would have no objection to such a right of appeal (or review, as appropriate) being included in the NETC Code, subject to appropriate and careful drafting of same to ensure clarity as to the nature of the appeal (or review) process.

### **"Natural Justice"**

To the extent that under this heading the TLC letter includes vague and unsubstantiated allegations as to the administration of the Solar Code, we repeat and refer to the discussion above.

Otherwise, in this section the TLC letter proposes that wording be included in the NETC Code as to the Administrator acting without bias and within the rules of natural justice.

While the CEC does not consider this to be essential – in circumstances where this is implicit in the NETC Code in any event – it would, of course, have no objection to such express wording being included in the NETC Code.

#### **“Onerous nature of obligations”**

The TLC letter includes a number of statements of opinion put on behalf of “two large Australian-based providers” as to the extent to which smaller participants would be able to meet the obligations set out in the NETC Code.

The standards and processes required of signatories to the NETC Code, and the overall objectives of the NETC Code (including for the benefit and protection of consumers, and the benefit of the industry more generally) have been addressed in previous submissions.

#### **“BNPL arrangements”**

Similarly, to the extent that the TLC letter puts submissions on behalf of the “two large Australian-based providers” as to the manner in which the NETC Code addresses “buy now, pay later” arrangements, the CEC maintains its position as set out in its previous submissions in line with the Applicants. Further, this issue will be addressed by the submission on behalf of the Working Group.

#### **“Exemptions”**

Again, to the extent that the TLC letter puts submissions on behalf of the “two large Australian-based providers” as to the manner in which the NETC Code provides certain scope for exemptions, the CEC maintains its position as set out in its previous submissions.

The CEC notes that the basis for and rationale for the possibility of exemptions has been addressed in previous submissions (including those of other industry stakeholders), and in particular, in the context of the need to allow for testing, trialling and development of new and emerging technologies and products.

#### **“Supplementary materials”**

Again, to the extent that the TLC letter puts submissions on behalf of the “two large Australian-based providers” as to the manner in which the NETC Code provides certain scope for supplementary materials, the CEC maintains its position as set out in its previous submissions.

The CEC notes that the need for and appropriateness of this part of the NETC Code has been addressed in previous submissions (including those of other industry stakeholders), and in particular in the context of the need to development and implement, in consultation with appropriate representative bodies, standards to apply in respect of emerging technologies (including in the context of the need for the NETC Code to be “modular” and accommodating to new technologies as they emerge).

#### **“Code Monitoring and Compliance Panel”**

The TLC letter makes various statements as to the appointment of persons to the Panel, including the chair of same.

The CEC notes that this issue has been dealt with in previous submissions, and that the appointment of the chair has taken place, with the Panel appointments to follow a process in due course.

Should you have further queries on the content of this submission, please do not hesitate to contact me on [mlim@cleanenergycouncil.org.au](mailto:mlim@cleanenergycouncil.org.au) or on 03 9929 4153.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mindy Lim', with a stylized flourish at the end.

Mindy Lim  
Code of Conduct Manager